

Message

From: Carl Garvey [cgarvey@racertrust.org]
Sent: 9/23/2021 8:47:21 PM
To: Ludmer, Margo [ludmer.margo@epa.gov]; Doyle, James [Doyle.James@epa.gov]
CC: Brendan Mullen [bmullen@racertrust.org]
Subject: Revised Ley Creek OU-2 RD AOC Para. 2

Hi Margo and Jim: As promised, here's RACER's proposed revised Paragraph 2 language.

The red text that is not underlined is verbatim from R2's dft of 9/21. The darker red, underlined text is verbatim from RACER's dft of earlier this morning.

RACER's further proposed changes to both R2's language and to our own language are shown in blue highlighted/redline-strikeout text.

The Paragraph is now more succinct, at least in our opinion, but still says what RACER needs to have it say and, I believe, what R2 needs to have it say. Please let me know your thoughts on these changes.

Thanks. –Carl

Ps: BTW, if we go with the abbreviation of "ROD" below, we'll need take out the previous "first use" of that definition later on in the AOC.

2. This Settlement provides for the performance of RD activities and the agreement to payment of certain response costs incurred by the United States at or in connection with what is described herein and defined as OU-2 as well as an area referred to and defined herein as the Expanded Territory, both located in the Town of Salina, Onondaga County, New York. It is RACER's has maintained the position that OU-2, or LCDM, should does not include the Expanded Territory as the breadth of the latter such area was not anticipated at the time of selection part of the remedy selected for OU-2 in the 2015 Record of Decision ("ROD"). It is EPA's, on the other hand, maintains position that, EPA is the lead agency at OU-2, that an post-ROD expansion estimate of a Superfund site's geographic area is not uncommon, and that it is EPA, as the Lead Agency for OU-2, that determines what the scope of operable units are at Superfund such sites. However, because For purposes of and in accordance with this Settlement only, RACER is willing to conduct the RD activities that EPA desires to be performed, notwithstanding the geographic definitional any disagreement among the Parties as to the extent of OU-2, for the purposes of this Settlement only, the use of the term Expanded Territory as identified herein as being an area separate from OU-2, as requested by RACER, is acceptable to EPA. EPA does not acknowledge this distinction between OU-2 and the Expanded Territory and maintains that the areas defined as part of the Expanded Territory comprise a portion of OU-2. Nothing in this Settlement is intended to be, nor shall it be construed as, an agreement by EPA or RACER as to the question of whether, for any purpose other than this Settlement, OU-2 includes or excludes the Expanded Territory. The Parties further understand and agree that the use of these terms "OU-2", "LCDM", "Expanded Territory", or "Site" in this Settlement will have no bearing or relevance on potential, future precedential value in any requests that additional RACER funding (including requests for access to "eCushion fFunding" as defined under by the Trust Consent Decree) be allocated toward RACER's performance of response activities at OU-2 or the Expanded Territory or the Site.

HERE IS THE ABOVE LANGUAGE WITHOUT THE REDLINING/STRIKEOUTS:

2. This Settlement provides for the performance of RD activities and the agreement to pay certain response costs incurred by the United States at or in connection with what is described herein and defined as OU-2 as well as an area referred to and

defined herein
as the
Expanded
Territory, both
located in the
Town of
Salina,
Onondaga
County, New
York. It is
RACER's
position that
OU-2 does not
include the
Expanded
Territory as
such area was
not part of the
remedy
selected for
OU-2 in the
2015 Record
of Decision
("ROD"). It is
EPA's
position that a
post-ROD
expansion of a
Superfund
site's
geographic
area is not
uncommon,
and that it is
EPA, as the
Lead Agency
for OU-2, that
determines the
scope of
operable units
at such sites.
For purposes
of and in
accordance
with this
Settlement
only, RACER
will conduct
the RD
activities that
EPA desires to
be performed,

notwithstanding any disagreement among the Parties as to the extent of OU-2. The Parties further understand and agree that the use of the terms “OU-2”, “LCDM”, “Expanded Territory”, or “Site” in this Settlement will have no precedential value in any requests that additional RACER funding (including requests for access to “Cushion Funding” as defined by the Trust Consent Decree) be allocated toward RACER’s performance of response activities at OU-2 or the Expanded Territory or the Site.